IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1597 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
THAKORE PRAHLADJI KALUJI - Opponent(s)

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Appearance :
Ms.Hansa Punani, learned APP for Appellant(s) : 1,
None for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA
and
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 22/03/2006

ORAL JUDGMENT

(Per : THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI)

1. The present appeal has been filed by the appellant State of Gujarat challenging the judgment and order of learned Special Judge (Atrocity),Mehsana in Special Atrocity Case No.85 of 2002, dated 30.8.2003, vide which the respondent (for short 'the accused') had been acquitted of offences punishable under Sections 323, 504, 506(2) of the Indian Penal Code (for short 'IPC') and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Atrocity Act'). Being aggrieved by the aforesaid acquittal of the accused, the State of Gujarat has filed the instant appeal under Section 378 of the Criminal Procedure Code (for short “the Cr.P.C.”).

2. The facts as disclosed in the case of the prosecution and in the F.I.R. are that on 10.4.2000 the complainant Somabhai Manabhai met the accused at about 6 '0' Clock in the evening near the Milk Dairy at village Dhameda. The accused asked the complainant

as to why he had not come to his field for doing labour work. Upon such asking, the complainant told the accused that first of all, he should pay wages amounting to Rs.200/- as labour charges to him and only after this he would come to work for the accused. On this reply being given by the complainant, the accused got angry and excited nd started using abusive language. The accused also intentionally insulted and intimidated the complainant with an intention to humiliate him. The complainant is a member of the Scheduled caste and the incident took place in a public place. It is further the case of the prosecution that the accused took a bicycle chain and inflicted blows of the chain on the backside, left hand and left leg of the complainant, who shouted for help. The son of the complainant, Ratilal, reached the place and intervened. At this the accused went away but while going away, from that place he threatened the complainant that if he would ask for the labour charges in future he would be done away with. It has been stated by the complainant in his compliant that the accused also gave him abuse regarding his caste,

with an intention to humiliate him.

3. The complaint for the alleged offence was lodged by the complainant against the accused for the commission of offences punishable under Sections 323, 504, 506(2) of the IPC and Section 3(1)(x) of the Atrocity Act at Mansa Police Station, where it was registered as C.R.No.II-54/2000.

4. After the registration of the FIR, the investigation was carried out and during the course of investigation, statements of witnesses were recorded and panchanama of the scene of offence was drawn. Thereafter, the medical certificate showing the injuries sustained by the complainant was obtained.

5. At the end of investigation, as sufficient incriminating evidence was found against the accused, he was charge-sheeted before the learned J.M.F.C., Mansa.

6. As the offence under the Atrocities Act is

exclusively triable by the learned Special Judge, learned J.M.F.C.,Mansa committed the case to the Court of Sessions,Mehsana, where it was registered as Special Atrocity Case No.85 of 2002.

7. On committal of the case, the learned Special Judge, to whom the case was made over for trial, framed the charge against the accused, which was read over and explained to him, which was denied by the accused. Thereupon, the trial of the accused was commenced.

8. To prove the culpability of the accused, the prosecution has examined 8 witnesses and relied upon a number of documents, details of which have been given in para 5 of the impugned judgment and order.

9. After recording of the evidence of the prosecution witnesses was over, the learned Special Judge explained to the accused the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement under Section 313 of the Code. In his

further statement accused denied the case of the prosecution in toto and has not led any evidence nor examined any witness in support of his defence.

10. At the end of the trial, on analysis, appreciation, evaluation and scrutiny of the evidence on record, the learned Special Judge has come to the conclusion that the prosecution has failed to prove the charge levelled against the accused. He has also held that the evidence of the prosecution witnesses does not inspire any confidence and there are material contradictions in their evidence. It has also been held that no independent witness has been examined by the prosecution. For the forgoing reasons, it was held by the learned Special Judge that the guilt of the accused is not established and resultantly, acquitted the accused of the offences with which he was charged, which had given rise to the instant appeal at the instance of the appellant State of Gujarat.

11. This Court has considered the submissions advanced by Ms.Hansa Punani, learned APP for the

appellant State of Gujarat at length and in detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record which is read and re-read by the learned APP with reference to broad and reasonable probabilities of the case.

12. At this juncture, it would be relevant to examine the deposition of the prosecution witnesses:

12.1 The prosecution has examined the complainant Somabhai Manabhai as P.W.1, whose evidence is at Exh.11 and the son of the complainant Ratilal Somabhai, who has been examined at Exh.13. We will first advert to the deposition of the complainant at Exh.11 which is, in sum and substance is the same as that stated by him in the written complaint at Exh.12. Moreover, he has admitted that the accused has not given any threat regarding his life. The complainant has further stated that since he was injured, he was admitted at the Civil hospital in Gandhinagar. In his cross examination the complainant has admitted that the street where he

lives is near the Dairy where, there are about 30 houses. The Panchayat office is situated next to the Dairy and the Peon and the Talati are present in the Panchayat office. He has further admitted in his cross examination that there are 10 to 12 houses on the road where the Dairy is located, and near the Dairy there is a bus stand and due to this a lot of people are present there in the evening. The complainant has further admitted in his cross-examination that prior to the incident an election took place in his village and the wife of the accused was elected as a Sarpanch. From the same ward, two candidates Bhagabhai Virabhai and Punjabhai Kalabhai had also contested. Punjabhai was in his party whereas Bhagabhai was in the party of Sarpanch. Punjabhai who was the supporter of the wife of he accused was defeated in the election. He has also admitted that he does not remember for how many days and in which month he went to the house of accused for labour work.

13. On appraisal of the evidence of P.W.1 (complainant) it is seen that nothing has emerged

regarding the threat of life allegedly given by the accused to him or any abusive language regarding the caste of the complainant, being used by the accused against the complainant. This constitutes a material contradiction between the testimony of the complainant and the version given in the written complaint. In his deposition, the complainant has no where stated that the accused has intentionally humiliated him and given a threat to his life.

14. It is the case of the prosecution that the accused had taken out a bicycle chain and given blows with it to the complainant. So far as the injury sustained by the complainant is concerned, the deposition of P.W.5 Dr.Dilip Prabhudas Patel which is at Exh.20 is relevant. The Medical Certificate regarding the injury issued by P.W.5 is at Exh.21. The injuries sustained by the complainant were of simple nature. In his cross examination, the Doctor has stated that if any person is given a blow with the chain of the bicycle,the marks of that chain would be visible on his body. In the case of the complainant, no such bicycle chain mark were visible

on his person. Therefore, the oral evidence of the complainant regarding the beating with the bicycle chain by the accused does not get any corroboration by the medical evidence.

15. The prosecution has examined P.W.2 Ratilal, son of the complainant whose evidence is at Exh.13. It is the case of the complainant that on the accused getting angry and beating him with the bicycle chain, P.W.2 came there and intervened, upon which the accused went away while giving threats to the complainant. In this context, the deposition of P.W.2 is relevant, since it is interesting to note that being the son of the complainant, he has not supported the case of the prosecution, nor the version of the complainant in his written statement, and has therefore been declared hostile. On cross examination by the APP, P.W.2 has stated that at the place where the incident took place, about 25 to 30 people had gathered, who belonged to different castes and communities. In sum and substance, he has given a total gobye to the case of the prosecution, but later on he gave a version in favour of the

prosecution case in his cross examination. There are material contradictions and infirmities in the depositions of P.W.1 complainant and P.W.2 Ratilal, son of the complainant, who is stated to have been present at the spot and at the time of the incident. The deposition of P.W.2 does not at all support the version of the prosecution. The complainant has stated in his cross examination that when the accused was going away on his scooter after the incident, the wife and son of the complainant came to the place of the incident. From this it can be deduced that P.W.2 did not, in fact, witness the incident. P.W.2, on the other hand says that he was standing in a shop near the place of the incident when he saw the accused beating the complainant. The complainant states that he did not call out for help whereas P.W.2 states that he came to the place of incident on hearing the shouts of P.W.1. From the contradictions and inconsistencies that arise in the two depositions of P.W.1 and P.W.2 respectively, it can safely be deduced that the versions given by both are not correct and this creates a grave doubt about the authenticity of the manner in which the occurrence

took place, as stated in the complaint.

16. Apart from P.W.1 and P.W.2 no other independent witness were examined by the prosecution. It is relevant to note that the Panchas for the recovery of Bicycle chain have also turned hostile.The panchanama is at Exh.15 but the recovery of the bicycle chain cannot be relied upon in view of the total gobye given by the panchas for the said recovery, to their earlier statement.

17. Both the complainant P.W.1 and P.W.2 have stated that the place where the incident took place was not a deserted place but was thickly populated and many people were coming and going from that place and were present at the time of the incident. P.W.2 has categorically stated in his cross examination that about 25 to 30 people of different castes and communities had gathered when the altercation took place. From this, it can be assumed that the incident was witnessed by many other persons. However, no independent witness has been examined in support of the case of the prosecution and only the complainant

has been examined as P.W.1 and his son as P.W.2. Admittedly, P.W.2 is an interested witness, being closely related to the complainant, but even his version does not match that given by the complainant.

18. Another defect from which the prosecution case suffers is the delay in the lodging of the complaint, which is not explained. It has come in evidence that the incident had taken place on 10.4.2000 at village Dhameda at about 6 '0' clock in the evening. Dhameda is 3 Kms.away from Mansa. Despite this, the complainant has gone to Gandhinagar for taking treatment and has lodged the complaint after 24 hours of the incident. There is no explanation worth the name for the delay in lodging the complaint and this itself renders the case of the prosecution dubious.

19. Another flaw in the case of the prosecution is that as per the statutory provisions contained in Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities)Rules, 1995, (for short “the Rules”), the offence under this Act has to be investigated by an officer not below the rank of a

Deputy Superintendent of Police. Admittedly, there is a violation of Rule 7 of the Rules in the present case, as the Deputy Superintendent of Police himself did not investigate the case, as required by the Rules but the investigation was conducted by P.W.7 Vinubhai Ranchhodbhai Patel,who is admittedly a P.S.I. The Deputy Superintendent of Police has only arrested the accused and filed the charge-sheet. The rest of the formalities regarding the investigation have been completed by P.W.7, who is admittedly of the rank of P.S.I., which is in violation of Rule 7 of the Rules.

20. We have closely and carefully examined the evidence adduced by the prosecution, and having made a re-analysis, re-appreciation, and re-evaluation and close scrutiny of the same, we are of the opinion that there are material contradictions in the oral testimony of the complainant and that of his son P.W.2 Ratilal. In addition to this, the deposition of the complainant does not prove the use of abusive language or threat to life by the accused, against the complainant. Moreover, the versions of P.W.1 and

P.W.2 do not get corroboration from the medical evidence with regard to the injuries sustained by the complainant. There are no independent witnesses who have been examined, although it has come in evidence that numerous people had gathered at the spot at the time of incident. The delay in filing the FIR has not been explained and the statuary provisions contained in Rule 7 of the Rules have been violated.

21. In view of the unsatisfactory evidence led by the prosecution, according to us, the findings recorded by the learned Special Judge are absolutely just and proper and in recording the said findings no illegality or infirmity has been committed by him. We are in complete agreement with the findings, ultimate conclusion and resultant order of acquittal recorded by the learned Special Judge, as, in our view, no other conclusion is possible except the one reached by the learned Special Judge.

22. It is a cardinal principle of criminal jurisprudence that in appeal against an acquittal if another view is possible, then the appellate Court

cannot substitute its own view by reversing the acquittal into conviction, unless the findings of the trial Court are perverse, contrary to the material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable. (See Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225). In the instant case, the learned APP has not been able to point out to us as to how the findings recorded by the learned trial Court are perverse, contrary to material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable.

23. In the case of **RAM KUMAR V. STATE OF HARYANA, reported in AIR 1995 SC 280,** Supreme Court has held as under:

> "The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379, Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the

main grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal."

24. In the case of **Kali Ram v. State of Himachal Pradesh, AIR 1973 SC 2773** the Supreme Court has held as under:

"Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence the court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations.

Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.

> The guilt of the accused has to be adjudged not by the fact that a vast number of people believe him to be guilty but whether his guilt has been established by the evidence brought on record. Indeed, the courts have hardly any other yardstick or material to adjudge the guilt of the person arraigned as accused. Reference is sometimes made to the clash of public interest and that of the individual accused. The conflict in this respect, however is more apparent than real.
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> It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilised society. All this highlights the importance of ensuring, as far as possible, that there should be no wrongful conviction of an innocent person. Some risk of the conviction of the innocent, of course, is always there in any system of the administration of criminal justice. Such a risk can be minimised but not ruled out altogether. (Paras 24 to 27)”

25. In the present case, on the over all appreciation of the evidence, this Court is satisfied that there is no infirmity in the reasons assigned by the learned Special Judge for acquitting the respondent/accused. Suffice it to say that the learned Special Judge has given cogent and convincing reasons for acquitting the respondent/accused and the learned A.P.P. has failed to dislodge the reasons given by the learned

Special Judge and convince this Court to take a view contrary to the one taken by the learned Special Judge.

26. In the above context, we do not find any valid reason or justifiable ground to interfere with the impugned judgment and order acquitting the respondent/ accused of the offences with which he was charged. Hence, leave to appeal deserves to be refused by dismissing the appeal in limine.

27. For the foregoing reasons, leave to appeal is refused. The appeal is dismissed at the threshold.

(A.M.Kapadia,J)

arg (Smt.Abhilasha Kumari,J)